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# This is not America: The Acting Government of the Hawaiian Kingdom Goes Global with Legal Challenges to End Occupation

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## Part 1

### Introduction

This study is to be published in a journal concerned with *glocal* studies, a field of sociology concerned with finding the ways in which global and local cultures interact and produce novel and often unexpected effects on one another. This approach could suffer from a bias of looking too hard for the exotic in local responses to global culture while failing to see the degree to which the local cultures are already working within the global norms established by Western powers.

Such was the case with this study of Hawai'i. I came to the subject expecting to find a movement that defined Hawaiian identity by blood lineage and sought to enhance native rights by seeking justice within the existing social and political framework of American state and federal laws. Instead, I found the provisional government of a nation that is utilizing the framework of international law to end a foreign occupation that has existed since 1898<sup>1)</sup>. What is more, the Hawaiian state that existed in the 19th century had already transformed itself into a nation that had political structures similar to those of European nation states of the time. It was a multi-ethnic constitutional monarchy that had equal treaties with foreign powers, embassies, and international recognition as an independent state.

The provisional government's use of international law to restore a dormant government and revive a disappearing culture should not be confused with indigenous

struggles that lack this history of having once been a fully independent state recognized within the global order of the 19th century. Furthermore, Hawai'i is an island nation, so its geographical isolation means there is even less reason for it to negotiate the nation-within-a nation status that is the norm for aboriginal groups on the North American continent. When Hawaiians point out this advantageous legal position, it should not be viewed as an attempt to place themselves above other groups. Hawaiians have always expressed solidarity with aboriginal groups that had different experiences with Western contact, but they were in a unique situation that requires a different strategy.

Hawai'i is also different from another category of independence struggle, that of ethnic groups seeking self-determination after a history of colonization. They also appeal to international law and the right to self-determination promised by UN resolutions, but Hawai'i doesn't belong in this category. It was never colonized in the political sense of the word.

Hawai'i's unique situation is an important case for the global community to pay attention to because of the implications for the continued projection of US military power. Hawai'i is the headquarters of the US Pacific Command and thus a highly strategic asset for the placement of conventional military installations and nuclear weapons. The illegal status of the Pacific Command, since the first landing of American troops in 1893 and 1898 should not be forgotten. The United States knowingly occupied a neutral territory, violating international law of the day, in order to conduct operations against another belligerent in the Spanish colonies of Guam and the Philippines.

The international community has begun to tire of America's 25-year reign as the sole global superpower, and serious questions are being asked about how long other nations can tolerate US interventionism, the global network of 700 US military installations (according to an estimate made in 2004)<sup>2)</sup>, and whether such a projection of power is something America can sustain for much longer. If the US government ever decided to, or were forced to carry out its obligations under international law to end the occupation of Hawai'i, it is conceivable that this could be the place where the global rollback of US military power begins.

Upon first hearing of demands to restore the Hawaiian government that was overthrown in 1893, most people tend to think it is a quixotic dream, and perhaps a reckless

one. It seems outlandish to even consider the question if one has been in Hawai'i among its skyscrapers, hotels, universities and military installations. Things may not be perfect there, but the standard of living and the level of political freedom there is nothing to take for granted when we compare it with most nations that are struggling for their freedom. This is not West Papua, where one can be imprisoned and tortured by the Indonesian government just for flying the national flag. In fact, America co-opted the Hawaiian national flag and turned it into the territorial and then the state flag, a decision which is a good metaphor for the general approach to incorporating ethnic Hawaiian culture. This is not to suggest that West Papua (a self-determination struggle) and Hawai'i (an occupation) are the same, but it is just to say that public perceptions of oppression and suffering will be different, and a great deal of public education may be needed in order to clarify why the American government must face up to its obligations under international law.

When the restoration of the Hawaiian government seems imminent, there is likely to be panic in financial markets and fear among Americans that a Castro-esque revolution is underway. Residents of the islands, both Americans and foreigners on resident visas, will have many anxieties about their property, social security and citizenship status. The potential for chaos exists, but the new government would be highly motivated to ensure the transition was orderly. The situation could be compared to that of South Africa during the transition out of apartheid. Many feared that civil war or violent reprisals would ensue, but Nelson Mandela defied these expectations and succeeded with a program of reconciliation and positive nation-building.

However, Mandela's success depended first on the apartheid government admitting that the transition to full democracy and equal rights had to take place. So far, the provisional government of the Hawaiian Kingdom has made numerous efforts to inform American officials at the state and federal level of the perilous legal situation they are in. The provisional government believes that it is vitally important for the US government to admit that the independent government of the Hawaiian Kingdom needs to be restored so that an orderly transition can be arranged.

Many government officials have been informed that they are personally liable for war crimes if they continue to carry out their duties within an illegal government structure, and this has prompted some of them to request guidance from federal officials, as high up

as Secretary of State John Kerry and Attorney General Eric Holder in 2014<sup>3)</sup>. Yet the US government has studiously ignored the problem, as if doing so means it doesn't exist. Yet this neglect also means they haven't denied that Hawai'i is an occupied nation. One could make an analogy here to the way Western governments ignore the consequences of creating nuclear waste, or levels of private and public debt that are beyond ever being repayable.

Officials and other members of the intelligentsia who are apprised of this situation may be exhibiting a stubborn tendency to view the requests for attention as a political stunt, confusing it with native groups that throw up roadblocks and declare intruders to be trespassing on "sovereign land." Regardless of the injustices that motivate such actions, they are often no more than unilateral pronouncements for which a claim under international law is much more difficult to establish. If anyone should still doubt that the Hawaiian case is different, the outcome of a recent war crimes complaint in Swiss courts sheds some light on the seriousness of the United States' position in Hawai'i:

... the recital of these facts and the naming of State of Hawai'i officials by the Swiss Court as alleged war criminals should be alarming to the State of Hawai'i. If Hawai'i were a part of the United States there would be no grounds for these allegations of war crimes; and the naming of State of Hawai'i officials, being government officials of the United States, would be a direct act of intervention in the internal affairs of the United States on the part of Switzerland for receiving and acting upon these complaints, and consequently be a violation of the 1850 US-Swiss treaty and international law. Additionally, the naming of the CEO of Deutsche Bank should also be alarming to other lending institutions that have committed war crimes of pillaging through their unlawful foreclosures in Hawai'i. Furthermore, the Swiss Court also acknowledged that the 1864 treaty between the Hawaiian Kingdom and Switzerland was not cancelled... This is another indication that the Swiss Court does not recognize Hawai'i as part of the United States, because if Hawai'i were legally annexed under international law, the Swiss treaty would have been void... the Swiss acknowledging that the Hawaiian-Swiss treaty was not canceled is tantamount to acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner<sup>4)</sup>.

The US government may want to continue to ignore the reality that has now been acknowledged by Switzerland, but the Deutsch Bank case suggests the pressure for change may come from global corporations that can no longer have confidence about entering into contracts in the State of Hawaii. The longer the US delays in facing such issues, the more difficult it becomes to prepare for a transition.

Several pressing questions readily come to mind when one considers the possible reactions to a restoration of the Hawaiian Kingdom. There would be a great deal of anxiety surrounding citizenship and residence, but these could be worked out on terms favorable to people already settled in Hawai'i. However, a great deal of public education would be necessary to point out that this would not be something to negotiate as a condition of America "allowing" the restoration to take place. International law *requires* that the transition take place. It is not a matter of a political settlement, so these issues could be decided only by the legitimate government after the transition. What is more certain, though, is that Americans would lose the freedom to move from the US to settle in Hawai'i. This would now involve moving to a foreign country, with the usual requirements of applying for the proper visas.

Although international law requires the transition to take place without it being a matter of political choice, the reluctance of the public to grasp this fact may lead to an antagonizing and emotional political discourse. Hawaiian residents loyal to America wouldn't get to choose, but it is conceivable that political parties in favor or rejoining America might emerge after the restoration if, in order to prevent racial conflict and economic decline, citizenship were granted to established residents. Many of them would still have attachments to America and the previous status quo, so within a few years they might, through a democratic and legitimate process, vote to rejoin the United States. They would, of course, have much support from Americans in the remaining 49 states. Thus, history could just repeat itself, but this time with a popular and legal mandate, likely fueled by well-funded US propaganda and threats by corporations to divest or withhold investment. The desire for a separate country might be held only by the minority made up of ethnic Hawaiians, in which case the majority becomes a problematic obstacle for them. Their problem could be solved with a strict definition of citizenship, which would force the foreigners to leave, but doing so would carry other risks. Alternatively, an oath of

allegiance could be required for citizenship and pro-annexation political activity could be outlawed as treasonous.

However, such self-preserving tactics that the Hawaiian government might take would cause America to impose economic sanctions and a propaganda war. The situation might lack the communist ideology of the Cuban Revolution, and in fact the Cuban situation is not at all comparable, but the American public reaction would be similarly emotional and intense. Cuba was a sovereign nation, but even its assertion of its rights was followed by fifty-five years of economic sanctions. When China had a communist revolution, American politicians searched for who was to blame for “losing” China. In the case of Hawai‘i, America would be losing a strategic military asset, a WWII memorial at Pearl Harbor, and its treasured playground in the Pacific. These losses would not go down easily. The American government has a record of using non-military means to undermine foreign governments through sanctions and the “democracy promotion” activities of government-funded non-profit organizations such as the National Endowment for Democracy. It is likely that economic sanctions and propaganda methods would be employed in full force, as they have been since the 1990s in Eastern Europe and Ukraine, to bring a pro-annexation party to power<sup>5)</sup>.

The acting government has foreseen these problems, and they are not naïve about the way America has exercised its power over the past century. However, they state that Hawai‘i’s status as a neutral state, and its treaties with other nations, would make it impossible for America to conduct any form of political agitation seeking to make Hawaiians choose to cede their sovereignty. Other nations would be keenly interested in keeping America out and keeping Hawai‘i neutral. Regardless of Hawai‘i’s secure position under international law and in its neutral status, many observers of American culture of recent decades might be wary of how little international law seems to matter when American public and political discourse becomes inflamed over a perceived loss of prestige.

At present, the American public, and most people living in Hawai‘i have little interest in changing the status quo. They prefer the popular but misguided understanding of Hawaiian history which sees it a series of inevitable tragedies. Times were changing, the strong conquer the weak and there is nothing that can be done about it, so many are likely

to say that the movement to restore the Hawaiian government is for dreamers who want to undo what can't be undone.

However, this lazy engagement with history takes no account of the system of international law that has evolved and has generally been observed since the Treaty of Westphalia was signed by European powers in 1648. Our present global order and system of international law is commonly traced back to this treaty which was the first to recognize national sovereignty as enduring and inviolable. In fact, when the strong conquer the weak there is something that can be done about it. Sovereignty cannot be taken away by an invasion unless the vanquished nation cedes it in a treaty. Otherwise, it is occupied by the victor, under the laws of occupation, until a new government can be constituted.

In the last century, there are many examples of sovereignty enduring in the aftermath of war and revolution. Japan was occupied for seven years after WWII, but the Japanese government was restored and the American occupiers left. The sovereignty of Western European nations was not erased by the occupation by Germany during the war. Provisionary governments in exile came back to take charge of governing.

More recently, the United States invaded Afghanistan and Iraq with no interest in annexation. It re-established national governments as quickly as possible after having invaded in 2001 and 2003 respectively. One could easily accuse the US in these cases of following international law only because it was convenient. They didn't want to be occupiers, and they were even less interested in annexing these countries and turning them into US territories. The objective was to just have national governments that would be compliant with American interests.

One could list numerous cases of the US ignoring international law whenever doing so served its interests. In fact, this has been the foundation of American foreign policy since the 1940s. American statesmen have often claimed to be not only realists but "existential realists" who are free to disregard tradition and international law in order to create new realities. The historian Greg Grandin describes Henry Kissinger's philosophy and enduring influence:

After the Cuban Missile Crisis, Kissinger has this great line: "There are two kinds of realists. One that observes reality and responds to it, and the other that

makes reality.” And what the West needs is the latter. That view was echoed by Karl Rove when he was in the Bush administration: “We’re an empire now and when we act, we create reality<sup>6)</sup>.”

The problem with this philosophy is that it is really just fancy intellectual packaging on the logic of a common bully. It would be endorsed only by those with the advantage of power. When a superpower is no longer in a position of strength, it won’t be a great supporter of existential realism. The blindness of American statesmen to this hypocrisy has led to an outcome described well by David Kaye in an article in *Foreign Affairs* in 2013:

U.S. Senate rejects multilateral treaties as if it were sport. Some it rejects outright... others it rejects through inaction: dozens of treaties are pending before the Senate, pertaining to such subjects as labor, economic and cultural rights, endangered species, pollution, armed conflict, peacekeeping, nuclear weapons, the law of the sea, and discrimination against women... The United States’ commitment problem has grown so entrenched that foreign governments no longer expect Washington’s ratification or its full participation in the institutions treaties create. The world is moving on; laws get made elsewhere, with limited (if any) American involvement. The United States still wields influence in the UN Security Council and in international financial and trade institutions, where it enjoys a formal veto or a privileged position. But when it comes to solving global problems beyond the old centers of diplomatic and economic power, the United States suffers the self-inflicted wound of diminishing relevance<sup>7)</sup>.

This end result of the application of existential realism has been described alternatively by Lawrence Wilkinson (chief of staff to former US Secretary of State Colin Powell) as an empire showing all the signs of decline experienced by previous empires: an insistence on the primacy of military power, overreliance on mercenaries, disproportionate spending on perceived threats, ethical and moral bankruptcy<sup>8)</sup>.

In spite of existential realism and cynical aphorisms such as “international law



only exists in textbooks about international law,” the positive effects of international law are plain to see. International law is generally obeyed by most countries, even by imperial superpowers, and it is the only framework we have for resolving international disputes. The deterrent effects of international law are powerful but invisible because we have to consider all the wars that didn’t happen due to respect for the sovereignty of other nations. Finally, international law can serve as a corrective on past mistakes.

A case most relevant to Hawai’i is the restoration of the Baltic states (Lithuania, Latvia and Estonia) after the collapse of the Soviet Union. One might have thought they had for too long been a part of the USSR and their sovereignty had melted away, but provisional governments formed and they revived the case for restoration. They had been illegally annexed by the USSR during WWII, and Soviet sovereignty was not universally recognized. After the collapse of the Soviet Union, their governments were restored. This history is a close analog of Hawai’i because the occupation by a superpower lasted over several decades through much of the same period of history. The restoration of the Baltic States illustrates that one cannot say too much time has passed, too much has changed, or a nation is gone forever once a stronger nation annexes it. The passage of time doesn’t erase sovereignty, but it does extend the time which the occupying power has to neglect its duties and commit a growing list of war crimes.

Part 2 of this article is an interview I conducted with Keanu Sai, acting interior minister of the Hawaiian Kingdom and professor of the University of Hawai’i, about his research on the basis for restoring government of the Kingdom of Hawai’i under international law. Before that, it is necessary to cover some Hawaiian history and the issues and grievances of the contemporary Hawaiian cultural revival that began soon after statehood and the era of mass tourism.

## **An Overview of Hawaiian History**

American contact with Hawaiian culture is often mistakenly confused with the European contact that occurred with other aboriginal groups in American history. On the American continent, the common pattern was that a hunter gatherer society with limited political and technological complexity was overwhelmed by the European culture advancing from the east. As they were pushed farther back, they came into conflict with other tribes and this

destabilized them all the more. They never managed to establish themselves as nations on an equal footing with France, England, Spain and the United States. They signed treaties but had to exist as nations within nations, and in this vulnerable position, aboriginal groups found the treaties were often not honored. The annexation of Hawai'i by Congress (1898) occurred only eight years after the bloody events at Wounded Knee, South Dakota, so it is not surprising that in the American consciousness Hawai'i would be confused with Indian lands taken over in the westward expansion of the 19th century.

Most of the history summarized here, unless otherwise noted, is taken from Gavan Daws' *Shoal of Time: A History of the Hawaiian Islands*<sup>9)</sup>. For the purposes of this brief outline, it provides enough for an account of Hawai'i between 1778 and the American takeover in 1898. However, since it was published in 1968, some scholars have found, by looking in original sources in both English and Hawaiian, that Daws' got things wrong and seemed too inclined to notice the incompetence of the monarchy. They find a major flaw was in the fact that this 400-page history of Hawai'i was written by someone who didn't know the language—usually a fairly basic requirement for an area specialist<sup>10)</sup>. This criticism is easier to make in hindsight, however, after the Hawaiian language revival, but in the 1960s a Hawaiian-speaking historian would have been a rarity. This was a shortcoming that the revival of the language and the establishment of Hawaiian studies programs later corrected. Another weakness, evident in hindsight, is that *Shoal of Time* didn't address the issue of the continuing existence of Hawaiian sovereignty, but this is something that almost no one was paying attention to until the 1990s. With these caveats in mind, *Shoal of Time* is still an impressive work that gave the debunkers a foil for later critical studies based on Hawaiian language documents and new research. And it must be said that while ethnic Hawaiians might feel slighted by Daws' tendency to see the flaws in the monarchs, his account wasn't at all entirely negative, nor should anyone expect a historian to look away from the mistakes and character flaws of historical figures. What's more, the foreigners portrayed form a long parade of scoundrels and fools, and in my reading of the book Queen Lili'uokalani comes out of it with her nobility, in every sense of the word, intact. Save for the Belgian priest, Father Damien, who lived with the lepers on Molokai for sixteen years and died with them, foreigners do not come off as heroic in *Shoal of Time*.

At the time of first contact with the British explorer Captain Cook (1778), the Hawaiian Islands were a group of kingdoms. Society was stratified, and food existed in enough surplus to have allowed the development of a bureaucracy and a warrior and priestly class. This social structure was similar to European monarchies, so the Hawaiian kings could understand the sorts of people they were dealing with. They were also perhaps a bit lucky that it was no longer the early 1500s when explorers like Hernan Cortez just marched into Mexico, planted a flag and embarked on violent quest for silver and gold. In this post-Westphalian world, the art of international relations had progressed just a little. Besides, Britain was preoccupied with its conflict with the American colonies and was not interested at this time in establishing another one in the middle of the Pacific Ocean.

These circumstances gave Hawaiians the time to adjust to the arrival of foreigners. As they came more frequently on whaling ships, the need to unify the islands became more apparent. Thus the young warrior Kamehameha I had unified all but two of the Hawaiian Islands (Kaua'i and Ni'ihau) by 1795, and these last ones joined in 1824. The Hawaiian monarchy was constantly adapting to Western influence, adopting and adapting Christianity and Western legal systems in order to hold its own among the family of nations. It was a remarkably enlightened approach, considering that it required a complete revision of ancient beliefs in a society that had never before had to deal with the outside world. When Japan opened up later in the Meiji Era (1868–1912), it looked to Hawai'i as an example of an isolated nation state that was holding its own and modernizing quickly.

By the 1850s, Hawai'i had established itself among nations. It had international treaties, embassies in foreign countries, a legislature, thriving trade, and schools. It issued its own postage stamps and currency, and there were numerous English and Hawaiian language newspapers. A growing proportion of its population was foreign born, and many citizens and even the royal family were of mixed blood. The native population fell quickly because of diseases and emigration, falling from 250,000 to 60,000 between 1800 and 1870. Many naturalized Hawaiian citizens had no Hawaiian ethnic ancestry, a fact which is often consciously ignored in contemporary discussions of Hawaiian cultural revival and identity politics.

Hawai'i's successful adjustment to the modern world came at a cost. It was caught in the dilemma of the development trap that so many nations have experienced since.

Foreign delegations, government offices and all the trappings of state forced the Hawaiian monarchy to play the game by the foreigners' rules. Hawai'i was on a slow-motion collision with global capitalism. While the monarchy had adjusted well to the protocols of international relations of the early 19th century, it seemed to be overwhelmed by the late-century form of oligarchic American capitalism that was bearing down on the islands after the 1880s.

The establishment of the plantation economy is often viewed as one of the most destructive changes to Hawaiian culture. It required irrigation and the diversion of water away from traditional taro cultivation. It also required the importation of labor, which was another factor in making ethnic Hawaiians a shrinking proportion of the population. The plantation economy is often decried as an aspect of Western colonization and domination, but it occurred while the monarchy was still in power. Sandalwood was also over-exploited in this era. In this early stage of globalization, the Hawaiian monarchy was no more enlightened about environmental stewardship than any other government. In addition to the upheaval in agriculture and resource management, the arrival of whaling ships twice a year eroded the social fabric by creating a demand for brothels and saloons in Honolulu and Lahaina.

Hawai'i needed tax revenue and the government thought it was in the nation's best interest to develop large scale agriculture for the export of sugar. The monarchs ruled in a constitutional monarchy, and the legislature and the cabinet always consisted of a mix ethnic Hawaiians and naturalized, foreign-born Hawaiians. Thus the moneyed interests of the islands' economy had ways to influence government. They could become naturalized Hawaiian citizens and get elected to the legislature or be appointed to cabinet posts. It was not essential that America had to take over in order to transform Hawai'i into a modern state conducive to foreign trade.

Thus it would be a mistake to think that before the American takeover, Hawai'i was an untouched paradise. It is somewhat de-humanizing to view Hawaiian culture in this idealized way. It is better to view Hawai'i as an emerging 19th century nation state, one that had its flaws and struggled to find its way in the global economy, just like any other nation at the time.

The monarchy was a monarchy after all, so it was naturally conservative. In spite

of many progressive policies and genuine concern for their subjects and day-to-day contact with them, they were by no means radically opposed to modernity. They were not much concerned with the socialist struggles that were emerging at the time, such as the uprisings in Paris in 1848 and 1871, except perhaps as cautionary tales for monarchies that wanted a continued existence.

Hawai'i was part of the British Commonwealth, not a colony, but a British protectorate from 1794–1843. The monarchy were anglophiles who made state visits to Britain and forged relationships with the royal family there. As long as Hawai'i was independent, the monarchy didn't seem to have any qualms about what Britain was doing at the time to maintain its control over other dark-skinned people in India, Australia and Africa. Like other states, it was busy enough looking out for its own interests. Yet the Hawaiian royalty could also be wary of Western influence and sensitive about being pegged in a racial hierarchy in the family of nations. An intriguing chapter in Donald Keene's history of Meiji Japan reveals the lengths that King Kalakaua was trying to go to in order to counterbalance the Western powers. In a private meeting with the Emperor during a visit to Japan in 1881, he suggested that Hawai'i, with Japan's leadership in the effort, should reach out to other Asian nations and develop an Asian bloc to counter Western influence. He confided to the Emperor his opinion that "the European countries... never consider what harm they may cause other countries. Their countries tend to... cooperate when it comes to strategy in dealing with countries of the East<sup>11)</sup>." Kalakaua made sure that this conversation was private between him and the Emperor only. The record of this meeting appears only in the Japanese records noted by Keene. Daws' history mentions the proposal, but not the fact that the king kept it a secret even from his inner circle. He didn't share the secret with his Minister of State, William Armstrong, a descendent of American missionaries who failed to mention it in his own account of the trip.

When Queen Lili'uokalani showed an interest in amending the constitution in 1892, the monarchy seemed to be rushing to get back what had been lost to business interests at the expense of the native population. Talk of American annexation had been in the air since mid-century, and the monarchy never found a way to put the issue to rest. Perhaps no one could have predicted how much America would become interested in the strategic value of Pearl Harbor in just a few years' time. The royal family's anglophilia set

them up for conflict with the generation of Hawaiian-born descendants of American missionaries who were running the economy by the end of the century. Westerners often ridiculed the kingdom as a “postage stamp monarchy,” and even Mark Twain mocked them for their excessive pomp, for only playing with the outwards trappings of Western culture. During his short stay of a few months, he wrote with alternating admiration and ridicule. “Imagine all this grandeur,” he wrote, “in a playhouse ‘kingdom’ whose population falls absolutely short of 60,000<sup>12)</sup>.”

By the time of the 1893 coup, the Hawaiian monarchs had shown increasing signs of their inability to escape their predicament. The queen was consulting an astrologer and planning to fix the budget crisis with an opium concession and a national lottery, a suggestion proposed to her by a charismatic new friend introduced by her German fortune-teller. In the meantime, members of her own government were withdrawing support and growing fearful of displeasing the oligarchs. These were rational money-making men who were frustrated with the inability of the monarch to solve practical problems like securing favorable trade agreements for sugar in American markets. They had been happy to govern with the monarchy before because it provided the cover of approval of the native population, but now they felt the system had outlived its usefulness. It was no small concern that the queen was interested in expanding the voter franchise beyond property owners.

It is easy to point to the errors or personal flaws of the royal family. Perhaps they were out of their depth, irresponsible in their personal lives, and oblivious to the way the outside world was changing. Or perhaps this was a systemic bias within the English language media from which the history was written. Their flaws, such as they were, might be used by some as an argument that the 1893 coup was justified, but on this point Mark Twain made cutting remarks, this time supportive of the kingdom. Regarding a visit to the Hawaiian parliament he remarked, “It was no more stupid than similar bodies elsewhere<sup>13)</sup>.” This point can’t be stressed enough in this era when the American attempt to overthrow of sovereign nations and heads of state is a routine occurrence (Iraq, Libya, Syria...) that no American politicians even question. However, just as individuals must be left to make their own mistakes in life, so it goes for governments too. If incompetent governance were the criteria for “rightfully” overthrowing foreign countries, all nations

would be at war with each other all the time. There is much evidence that the Hawaiian monarchs were not as incompetent as they were often portrayed, but the point here is: so what if they were? Considering what debates in the US Congress looked like then, and look like now, it shouldn't be surprising that Hawaiian monarchs exhibited similar human foibles.

In early January of 1893, the queen let it be known that she would look for ways to amend the constitution, but she added later that she wouldn't do it unconstitutionally. The faction pushing for annexation construed her talk of a wish to amend the constitution as a revolutionary act. It was the pretense they needed to act, but in fact they had been plotting for years to turn Hawai'i into an American territory.

American ambassador John Stevens had been plotting with the "Committee of Safety" (a term which they chose fully aware of its connection with the guillotine and the excesses of the French Revolution) for ways to convert Hawai'i into a US possession. They decided to exploit this "constitutional crisis," and 300 marines were landed from a US naval ship in harbor at the time in order to "protect the lives and property of American citizens" during the dangerous crisis that they were about to deliberately create. The danger to American citizens was deemed to exist, coincidentally, in front of important government buildings. Queen Lili'uokalani understood that a confrontation would only lead to bloodshed and an ultimate loss, so she temporarily ceded to the superior force until such time as the problem could be rectified by the proper US government representatives in Washington. President Cleveland sided with her and tried to negotiate a surrender.

Negotiations stalled when it came to the issue of pardoning the traitors. They were white and culturally Western, but some were Hawaiian nationals and subject to the death penalty for treason. It was unthinkable that such upstanding white men, all connected to the wealth and power of the islands, might be tried and hung like common criminals. Cleveland wanted them released and sent out of Hawai'i, but the queen countered that she was willing to consider a pardon. However, under Hawaiian law, she could only pardon criminals after they had been tried and convicted<sup>14)</sup>. The issue was simply left unresolved as the usurpers entrenched their position. They couldn't get Washington interested in annexation, so they declared themselves the government of The Republic of Hawaii and bided their time. Even though there were some trained lawyers among them, they forgot to

(or couldn't) clean up some loose ends, such as getting the head of state to cede sovereignty in a treaty.

Interestingly, it was US territorial status that the self-declared government wanted, not statehood. Even territorial status posed certain problems because it would force businesses to follow American labor law and other such inconveniences, but it was better than statehood. Statehood would have allowed all temporary laborers a pathway to citizenship, and they would get full voting rights as well. The oligarchs didn't want ethnic Hawaiians without property or Asian plantation workers to get voting rights. Female enfranchisement wasn't even law in the US. Thus joining America didn't have entirely positive consequences for the sugar barons—an argument which they used to claim they had no ulterior motives to hand Hawai'i over to the United States. However, turning Hawai'i into American territory did have advantages for them. It would provide access to American markets and it would ensure that Hawai'i would not eventually fall into the hands of another power such as Britain, Russia or Japan.

Another factor was the growing awareness of the strategic importance of Hawai'i. As early as 1872, US Generals Schofield and Alexander went to Hawai'i as tourists to scout the possibilities of using Hawai'i for forward basing strategy<sup>15</sup>). Pearl Harbor was the only deep water port for thousands of miles that had the potential to harbor a navy. American politics was divided between isolationism and expansion throughout the 19th century, but by 1898 the debate was resolved when war with Spain broke out over the Philippines, Cuba and Puerto Rico. Hawai'i was then willingly handed over to the US by the government of The Republic of Hawaii.

Today there are some who find the awareness of Hawai'i's uninterrupted sovereignty just too much to contemplate. Too much time has passed. The islands have become thoroughly Americanized. They say the whole Hawaiian cultural revival was financed by the all those Boeing 707s that started bringing in the tourists in the 1960s, so wouldn't it be better to not upset the status quo? They feel that independence would risk social conflict and economic decline, or that Hawaiians would continue to live under US economic domination without the benefits of citizenship. They frame the problem as something that is too fraught with uncertainty to be worth pursuing. Wouldn't it be better to just not stir up any trouble and look for ways to protect Hawaiian heritage within the



present state and federal system?

Some may believe that the issue of the transfer of sovereignty is impossibly murky: Where is sovereignty? Who possesses it after a coup, civil war or a revolution? Does it expire? Can powerful states just ignore the issue at their whim? The US government itself admitted in 1993 when it passed the apology resolution that the overthrow was illegal under international law, but it vowed to seek only “reconciliation between the United States and the Native Hawaiian people” who are defined therein as having blood ancestry with the race of people on the islands before foreign contact<sup>16)</sup>. Descendants of Hawaiian nationals who had other ancestry were ignored in the resolution. One senator at the time noted, “The logical consequences of this resolution would be independence,” which was the reason that his was one of the 34 out of 99 votes cast against it.

The failure of the US government to follow the “logical consequences” illustrates the official and the popular notion that powerful states can pick and choose when they want to obey international law. Thus the independence question gets framed as an issue of choice. Take a poll, find out independence is not popular, then forget about it. Alternatively, government institutions classify it as a matter of national security not open to public debate. Yet unless we want to live in an increasingly chaotic world in which respect for international law is constantly degraded, we have to recognize that international law is like domestic law: no one can choose at convenience when to obey it or enforce it. This is not a political debate. It is not an issue to be resolved by popular opinion or referendum.

### **The Hawaiian Cultural Revival and Contemporary Issues**

One academic at the University of Hawai'i told me that the modern cultural revival, and all the political demands that have come from it, arose paradoxically from the affluence brought by modern tourism. It financed the growth of the universities, schools, social programs and various initiatives to improve the lot of ethnic Hawaiians. The tourist industry benefitted from infusing the tourist experience with traditional arts and customs. Without the unique culture, why wouldn't people just go to Florida instead? As the hula dancers learned to put on shows for the tourists, the commodification of culture was surely resented, but all art needs a sponsor, and as the culture came back the resentment led to a

desire to revive the authentic. So, paradoxically, the selling of Hawai'i has led to a situation in which the occupying power is now faced with educated and empowered Hawaiians who know what Hawai'i really is and has been, regardless of the de-nationalization that began in the 20th century.

The injustices that have concerned Hawaiians are briefly summarized here as background information for the interview that follows. All of these grievances can be viewed as war crimes because they occurred during a foreign occupation. The summary is based on the topics covered in the book *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty*<sup>17)</sup>.

### **Water, Taro, Plantations and Agrochemicals**

Food and water are the source of life, so no issue looms larger as a factor in the destruction of the Hawaiian culture. The Hawaiian Islands have leeward and windward sides, and the industrial-scale plantations were made possible only because of irrigation projects that diverted water toward the dry inland plains from traditional taro farming on the windward shores. This destroyed local knowledge and traditions, and forced formerly self-sufficient people to become dependent on the plantation and tourist economy. Taro farming has been revived in many areas, but farmers still have to fight for access to water.

The struggle to revive traditional agriculture also involves the fight against the use of genetically modified crops and agrochemicals.

### **Geothermal Energy**

In these times of heightened awareness of the need to decrease the use of fossil fuels, geothermal energy has a reputation as a clean alternative. However, a large project planned for Hawai'i Island throughout the 1980s and 1990s failed due to poor planning, intense local opposition and court challenges. A grand plan was made to tap the volcanic activity of the island and send electricity to the most populous island, Oahu, by undersea cable. But in Hawaiian culture, the mountain was sacred, so despoiling it with generators and transmission cables was considered to be sacrilegious and dangerous. From a technical point of view, the plan wasn't well thought out. At one point, the mountain erupted and lava flows went through the sites where tunnels and generators were to be built, and for

opponents this confirmed that the gods were displeased. The project was never completed.

## **Jobs and Housing**

After the overthrow of the Hawaiian Kingdom, ethnic Hawaiians began to be marginalized at a faster rate. The territorial and state governments encouraged businesses and American citizens to settle on the island, and the settlers had preferred access to jobs, and thus the money to afford the best housing. One of the many unacknowledged war crimes is this encouragement of settlers. Under the laws of occupation, this is not permitted because over time the native population becomes a minority in their own country, and the settlers will increase the level of “popular” support for the notion that sovereignty should be ceded to the nation supplying the occupying force.

## **Military, Nuclear Weapons and Land Contamination**

The placement of military installations on occupied territory is also war crime, for it endangers the local population by turning them into a target of nations hostile to the occupier. Military exercises also contaminated parts of Hawai'i with toxic chemicals, particularly on the island of Kaho'olawe, near Maui. When one considers that during the Cold War America stored thousands of nuclear weapons on Oahu, and moved them frequently through runways alongside Honolulu International Airport, and on the island's highways, it is clear that Hawaiians were put at grave risk<sup>18)</sup>. The hazards included the risk of accidents, the actual contamination with radioactive materials that occurred<sup>19)</sup>, and the fact that Hawai'i was a highly strategic target for the USSR to hit in the event of nuclear war. The threat still exists, even though the US government claims that nuclear weapons were removed from “forward positions” in the 1990s<sup>20)</sup>. Nuclear armed submarines still pass through Hawai'i, and the islands are still a strategic target for enemies.

The danger of nuclear war lends an extra layer of meaning to the protest slogan about the American flag, “last star on, first star off.” Hawai'i and Alaska, being closest to Russia, China and North Korea, might be the first “American stars off” in a nuclear war. In addition to being the last state added (illegally) to the United States, there's also some significance in the fact that Hawai'i was the last part of the world to be inhabited by humans. In a nuclear exchange, it would be one of the first to be uninhabited.

The military also takes land, often prime land, away from other possible uses, and contributes to the housing problem. Troop levels have often been increased rapidly, without any plan for providing military housing. Newly arrived personnel are given subsidies to find accommodation on the private market, which leads to rent increases, evictions, and homelessness.

## **Language, Culture and Education Programs**

As the State of Hawaii and American settlers benefitted from the commodification of Hawaiian culture, ethnic Hawaiian pride and anger was re-animated, and this pressure led the University of Hawai'i to open Hawaiian studies programs and language revival programs. The Kamehameha Schools also opened up opportunities for children, but as they became successful and were able to be selective, this led to ethnic tension. Other races demanded equal access for their children. These programs are intricately tied with the effort to indigenize ethnic Hawaiians, yet they are also the source of the counter-narrative that revealed that Hawai'i is an occupied state.

## **Indigeneity and Blood Quantum**

Indigeneity refers, obviously, to the state of being indigenous, but its special meaning in the American political context is that it refers to an ethnic group being classified as “Native Indian” or “Aboriginal” and thus qualified for special status as a state within a state. Indigenous groups have treaties with the larger nation that contains them, and they have rights to limited self-government but must submit to federal law on certain matters. Many ethnic Hawaiians and non-ethnic Hawaiian residents have chosen to pursue better conditions for ethnic Hawaiians by accepting indigeneity, but doing so has serious hazards. Membership in an indigenous group requires a blood quantum to be defined, yet in a highly multi-ethnic, geographically small place like Hawai'i, where there is a high rate of inward and outward migration, Hawaiian ethnicity is sure to disappear through inter-marriage or being overwhelmed by immigration and the growth of other ethnic groups.

The acceptance of indigenous status also ignores the actual history of the Hawaiian Kingdom. It was an independent, fully recognized multi-ethnic nation in the 19th century. The native population was under serious stress from disease, and immigration was

making it a smaller proportion of the total population, but the kingdom dealt with this problem by granting citizenship to immigrants. Racial tension may have increased even if the kingdom had not been overthrown, but an independent country would have had the power to control immigration and take measures to guarantee equality and social harmony. Before the American overthrow, there had been serious concerns about the decline in the native population, but blood quantum and indigenous rights hadn't become such problematic issues.

## **Bishop Museum**

At the archives of the Bishop Museum in Honolulu researchers can access, by advance appointment only, all the historical documents of the 19th century that reveal the established sovereignty of the Hawaiian Kingdom and the illegality of the takeover in 1893. But for ordinary visitors, the exhibits provide little in the way of a contextualized and full explanation of what happened in the 1890s, and there is certainly no mention of Hawai'i as an occupied country. The museum is, after all, deeply embedded in the political culture of the State of Hawaii. Whatever is displayed there must be designed in such a way that no controversy will ensue. The following text from the exhibit was easy to photograph and transcribe in a short time, but the necessary compromises that went into the drafting of this text must have made it a long ordeal for the committee responsible for it:

In 1893, Queen Lili'uokalani introduced a draft of a new constitution to restore the power to the monarchy relinquished during earlier reigns. The move alarmed the business community who formed a "Committee of Safety" to protect their interests. On January 17, 1893, the Committee abolished the Hawaiian monarchy and established a provisional government in its place. In 1898, the Hawaiian Islands formally became a part of the United States. Though the Queen persisted in campaigning for the return of the kingdom, her efforts were unsuccessful. Lili'uokalani, however, still reigns as queen in the hearts of her people.

This text appears on the last plaque in an exhibit devoted to the Hawaiian monarchy. Approximately another dozen texts of similar length precede this one, all of

them providing biographical details of the monarchs, but little information about the broader context in which they lived. Just a couple extra paragraphs added to the above text and different word choices would paint a very different picture.

In fact, regarding the constitution that the queen “introduced” (to whom? where?) Daws’ chapter on the events describes this more as a desire to have a new constitution. Before the overthrow the queen clarified her intent by stating she wouldn’t (and couldn’t) unconstitutionally amend the constitution, so the response of the Committee of Safety was an over-reaction and a pretext. The Committee of Safety could be described as conspirators rather than “businessmen,” and their actions could be described as treason. In the text they don’t conspire, usurp, or overthrow; they merely “abolish.” There is no mention of the American ambassador’s deployment of US marines at government buildings to help in the “abolishing” of the monarchy. Nor is there a mention of the fact that President Cleveland declared the overthrow illegal and had no intent of supporting annexation.

The 1993 official apology of the US government admitted that the overthrow in 1893 and the annexation in 1898 were illegal under international law of that time, yet now, twenty-two years later, the Bishop Museum still cannot describe these matters honestly, even though the public doesn’t need protection. Anyone can find the full story through internet searches, but, unfortunately, for the leading institution curating Hawaiian history, the only narrative it can make available to the public is this superficial and misleading story that consoles “the people” with the tale that “the queen still reigns in their hearts.”

## **Sacred Mountains and the Thirty Meter Telescope**

In 2015, protests intensified against the construction of the Thirty Meter Telescope (TMT) presently under construction on the mountain Mauna Kea, Hawai’i Island, by an international consortium. Much of the reporting on the protest has framed it as a typical confrontation between aboriginal activists and state and corporate interests, one in which the protesters wish to reverse the decision made by a legally constituted government. In one report, a spokesman for the consortium declared:

TMT respects the rights of everyone to express their viewpoints. We also respect the laws of the State of Hawaii and the seven-year public process and authority

that granted us permits to build the Thirty Meter Telescope in the Mauna Kea Science Reserve's Astronomy Precinct. Like most people in the community, we truly believe that science and culture can coexist on Mauna Kea as it has for the past 50 years along with other public uses<sup>21)</sup>.

This report in *Honolulu Civil Beat*, like so much of the reporting on Hawaiian sovereignty, failed to mention that there is another faction within, or another side of this protest that is not merely protesting the construction project as an offense against the sacred mountain. They believe that science and culture may be able to coexist on Mauna Kea, but they question the very legitimacy of the laws of the State of Hawaii. The spokesman for TMT is completely missing the point.

In the interview that follows, Professor Keanu Sai of the University of Hawai'i discusses the recent Mauna Kea protests in the context of the work he has been doing for the last fifteen years to increase awareness of Hawai'i as a nation under occupation. His work reveals that Hawai'i was not colonized, annexed, or ceded to the United States but rather overthrown and occupied, and international law obliges the occupying power to restore what was illegally taken.

## Part 2

### **Interview with David Keanu Sai, Professor of Political Science, University of Hawai'i, Acting Minister of the Interior for the Kingdom of Hawai'i**

Interview conducted August 24, 2015 at Kane'ohe, Hawai'i

by Dennis Riches, Seijo University, Tokyo

( This transcript has been slightly edited, with notes and links added, for better presentation as a text be read.)

*I read your paper A Slippery Path Towards Hawaiian Indigeneity<sup>22)</sup>, and I watched your video lecture that you posted on the main page of [www.Hawaiiankingdom.org](http://www.Hawaiiankingdom.org)<sup>23)</sup>, so I don't want to make you repeat everything you've discussed there. I'll start by saying that I'm writing for a sociology and anthropology journal that's primarily interested in how non-Western systems and traditions of justice interact with the globally dominant Western system. I chose to study Hawai'i as a counter-example because it is a case where the non-Western or indigenous label has been falsely applied. The Hawaiian Kingdom, and the case for re-instating the Hawaiian government, are actually deeply embedded in Western systems.*

Yes. The Hawaiian Kingdom was actually similar to the states that grew out of Mesoamerica and Mesopotamia without any influence from feudal Europe in the creation of statecraft. Hawai'i evolved on its own and developed its own structure that pretty much paralleled what Europe was going through in the Middle Ages. It was focused on being a military power...

*... so it was a society with a surplus in food, a social hierarchy...*

Yes, exactly, managing a vast territory. Hawai'i Island is a good example. That island was



controlled by statecraft that centered on a bureaucracy similar to what the Aztecs and Mayans had. It's amazing when you consider how these large islands were controlled. When foreigners began to show up and they spoke of and acted upon the rules of a monarchy, Hawaiians could relate.

*They were speaking the same language, so to speak.*

Exactly.

*In the 19th century history, I saw a lot of parallels with the Meiji Era (1868-1912) in Japan. It seemed like the monarchy was trying in the same way to modernize quickly, catch up to the West, get recognition and avoid being dominated by one of the Western powers.*

Actually, it was the Meiji Emperor who was trying to follow the lead of the Hawaiian Kingdom. King Kalakaua actually visited the Emperor and there is clear evidence that he asked King Kalakaua to recognize Japan's full sovereignty and set a precedent for the Western powers. He did this because the European powers were not recognizing Japan's full sovereignty. They put it off until the latter part of the 19th century when they could no longer deny it, especially after the Russian-Japanese war (1904-05). So the Emperor was actually asking for King Kalakaua's assistance in putting Japan within that so-called "family of nations" which they were being kept out of<sup>24</sup>).

King Kalakaua wasn't able to do that because of the European pressure that was applied. Britain, Germany and then slowly America eventually came through and recognized Japan. But Hawai'i was actually a true, bona fide co-equal sovereign state with other members of the "family of nations." That's unparalleled. In the recent past, we didn't know that. This status meant that Hawai'i did not have any unequal treaties. The ports were not run by foreign governments that could set up their own tribunals. That's the uniqueness of Hawai'i.

*Yes, that was a big issue in China, where the Western powers had their own territories in Chinese ports and unequal treaties.*

That's right. I'll actually be talking about this next month at a conference in Cambridge. I've been invited to talk about non-European states in the age of imperialism. People didn't know about Hawai'i and its position, but now they are starting to look at the diplomatic relations in the archives throughout Europe. It has completely shifted the paradigm of how we look at Hawaiian history.

*As a Canadian, my interest was caught by the war crimes complaint you filed in Canada back in May [May 2015, 3 months before this interview]. What=s happened since then?*

Yeah, we actually got a reply from the RCMP [Royal Canadian Mounted Police] war crimes unit. It's actually called the "sensitive and international investigations" division. They acknowledged what is going on here, but they were saying that they don't have jurisdiction over this particular case pursuant to Section 8 of their war crimes statute. Section 8 says that a perpetrator must be a Canadian citizen, or employed by a Canadian citizen or by Canada in a civilian or military capacity. The victim must be a Canadian citizen or a foreign citizen who is allied with Canada in an armed conflict.

The reporting of war crimes for what took place on Mauna Kea—the destruction of property and unlawful confinement, unlawful arrest—the victim was Kaho'okahi Kanuha. He is not Canadian. He's Hawaiian, so the attorney responded back to the RCMP last week that it does meet the requirement of Section 8 because the perpetrator that has orchestrated the arrests and the destruction of property is employed by a Canadian which is a partner of Thirty Meter Telescope (TMT) ([www.tmt.org](http://www.tmt.org)) in a civilian capacity. And that's the attorneys as well as the construction company. That's the response that is asking the RCMP to now proceed with pressing charges. So it met the requirement of the statute.

Before we got to that point, we had to get the RCMP to address the fact that Hawai'i is not part of the United States. They stated that they were in consultation with the Canadian Department of Justice's war crimes program. They read over the two binders I provided to them. These showed from an academic standpoint the evidence that answers three questions:

1. Did Hawai'i exist as an independent state and a subject of international law? Yes, this was established in 1843.
2. Does the Hawaiian Kingdom continue to exist as a state under international law, despite its government being illegally overthrown by the United States in 1893? Yes, because you separate sovereignty from government. The government was removed but sovereignty was never surrendered.
3. Are war crimes being committed in the Hawaiian Islands? Yes.

*This seems like it should be a shocking revelation, yet there has been no media coverage. It seems like the sort of story that some media outlets would like to sensationalize or politicize.*

The private media and the political class will not face this issue because the implications are enormous for businesses and property owners. They will not face them until they are forced to. In any case, it is better not to politicize the information. It is better to institutionalize and normalize it. That's why we're focused on education.

In the 1980s, the ethnic studies programs taught that we were colonized. We now know this was wrong. We were never colonized. We were occupied. Colonization implies we were never a country, and on that basis you have to talk about self-determination, making a nation for the first time, and then you have an "independence movement."

The colonization view of Hawaiian history contributed to the problem, and there is a conflict there among scholars and activists. An anthropologist should be able to see what the situation is. An anthropologist would not call the German occupation of France in WWII "de-nationalization." They would never say France lost its independence when Germany occupied it. The theoretical framework and presumptions are important. If you think Hawai'i is part of the United States, then you will naturally see Hawaiians as Native Americans.

We shouldn't start from today's assumptions. We should start from the past, look for the

facts, and move forward. And look at the law of that time. Don't judge yesterday by today's standards. In my work I took a scientific approach. It's a matter of testing the information for falsifiability. Can you falsify the information that we present? What people think of it doesn't matter.

*You are the acting interior minister of the provisional government of the Hawaiian Kingdom. For lay people, this might have to be explained. How does one claim to be a provisional government? Were there competing claims?*

There were no competing claims. I'm operating within a structure. I'm not operating from a post-modern view of starting from nothing then seeing what comes out of it. This is very contextualized. When I realized that the Hawaiian Kingdom was a country, that a state still exists, but its apparatus, its government was illegally overthrown, I needed to separate first the physical manifestation, which is government, and second, the subject of international law.

The country is what has sovereignty. Sovereignty and independence are synonymous. Independence is a political term which means sovereign authority exists over your territory to the exclusion of other sovereignties that exist over their territories, each being independent of each other. That's an independent and sovereign state. If the government was overthrown but the state still exists, did the apparatus of the government cease to exist? That's called the legal order. Now that legal order is the laws that applied at that particular time before the overthrow took place. That's what our provisional government is based on, but it's not just me. There are a lot of people behind this. Oh, there are a lot. I'm in the front, though. I run point.

I looked at it from a very pragmatic standpoint. I needed to draw from other examples around the world that look like us. One example is Belgium in WWII. The king was captured and Belgium was occupied. Its citizens fled, and in Great Britain they organized a government in exile. Those governments were provisional or what is called "acting governments," so they could provisionally speak on behalf of that state that had been

occupied. We took the same concept. Instead of creating a government in exile, we established a government here under the doctrine of necessity. The doctrine of necessity also applied to how other nationals created acting governments in exile. We had to find a way to assume the chain of command within the Hawaiian infrastructure, and that comes under the Hawaiian constitution. That's the organic law and how that applies to people in their private capacity. We developed a plan to follow Hawaiian Kingdom law, so we created a company called the Hawaiian Kingdom Trust Company which is a general partnership created under the 1880 co-partnership statute which required us to register it within the Bureau of Conveyances.

The government of the Hawaiian Kingdom, the physical body, to put it in a simple way, was carjacked. They took the queen and her cabinet, replaced them with Sanford Dole and his cabinet, and then with military backing forced everyone to sign oaths of allegiance. All they did was change the driver. The car is still there. That car still exists today except that it's painted red, white and blue. Everything within the structure, the positions of the governor, the mayors, the courts—they all come from 1845. That's not an American creation. We utilized the infrastructure. We are in our house, and we are using the rules that apply to the time before it was taken over.

There is a way you can assume the chain of command through what is called the regency. We assume the roles up to the ministry of the interior, who sits in a cabinet with three other ministers: the attorney general, finance and foreign affairs. This cabinet, under Hawaiian law, can serve as a counsellor regency in the absence of a monarch. And we have a history of that. In 1871, Kamehameha V died without naming a successor. Under the constitution that would still have applied in 1893, the four ministers would automatically become a counsellor regency which serves in the absence of a monarch, and that regency would call an emergency session of the legislature to elect by ballot a successor to the throne. And that's when King William Charles Lunalilo was elected. One year later he died without a successor and the same thing took place. King Kalakaua came in and changed the cabinet, but you had a continuum. There was no abeyance in government. It always falls onto some entity.

To avoid the previous problem, he named a successor, Princess Lili'uokalani, and she became queen in 1891 without any regency required. We basically just followed the same rules that were followed back then. That's why we are called an acting government. It's provisional because this is by doctrine of necessity, but we would have the capacity to reconvene the legislative assembly, and when we have to, to elect by ballot a permanent regent or a monarch. We have those options in our laws. We are not like other groups advocating for Hawaiian sovereignty or independence.

Other sovereignty groups have been operating since the 1980s on the premise that we are part of the United States and they want to break away, and they all come up with their own views. No one has ever taken the position that the kingdom still exists and we're under occupation. As time has progressed and people are becoming educated, some of these sovereignty groups have begun to borrow terminology to make it look as if they are no different from the acting government. That's not the case. They are really just making stuff up.

For we who did this we have to be very careful because there are hazards when private people, under the doctrine of necessity, assume the role of government, which is allowed under English common law—we actually followed the precedents of the Commonwealth Courts.

There was one particular case in a British colony in Africa where the governor general was killed in an uprising and a British subject assumed the role of governor general in an acting capacity. He was brought up on charges of treason. This was in the 1860s. His defense was necessity. He said he had to. There was no alternative, so the court came up with provisions that you must meet in order to be within the framework of necessity. First, your actions cannot violate the rights of the citizens under the state, and second, your actions cannot reinforce your position because you're supposed to be there only provisionally. We actually followed these requirements to the letter. That's how we did it. It's not a political process in which we are elected. It's an extraordinary situation which invokes the doctrine of necessity. That's really all it is.

I went to The Netherlands, to the permanent court of arbitration. They looked into how we became the acting government. This was a case between Lance Larsen, a Hawaiian subject, who was attempting to hold the acting government accountable for not protecting him when he was put in prison. We were the defendants in this case, and it went to the Permanent Court of Arbitration in The Netherlands for international arbitration. The court registry was taken aback because they thought Hawai'i was part of the United States, but they couldn't deny the Hawaiian Kingdom's existence as an independent state because the Hawaiian Kingdom had a treaty with The Netherlands where the court is located. So if it wasn't an independent state, where is the evidence that that state was extinguished? All they have is American laws passed by Congress which don't affect that status because it's not possible for one country to unilaterally extinguish the sovereignty of another, so they had to accept that the Hawaiian Kingdom exists. The next step was to ask who is Lance Larsen as a Hawaiian subject? He had to show his birth certificate and those of his ancestors that go back to the 19th century. As the acting government we had to explain how we became the acting government and lay out the case for necessity. They accepted it. That's why the case was heard. So it's not a political process. Either you did it right or you didn't do it at all. I'm not trying to argue why we should be the acting government. We are the acting government and that's all there is to it. We don't have any effectiveness because we are occupied, but we are the acting government.

*So when you talk to people who live here, people who were perhaps born on the mainland...*

You mean in America. Mainland was a term that was actually first used by Sanford Dole after the takeover encouraging Americans to migrate to Hawai'i, so he would tell people that's the mainland because we're an extension of America now.

*Well, I imagine that if you asked Americans about this they would be shocked and think "You people are revolutionaries. What are you aiming for? What sort of policies are you going to implement?" But you seem to be focused on simply the necessity of following international law to get the Hawaiian government re-activated. Policies will be decided*

*after that by the government in place.*

Exactly...

*Americans are going to say, "If we are going to support this, we want to know what it=s going to be like."*

I don't think people in the United States are in a position to dictate anything because this is over 120 years of occupation. When you look at it from international law and the non-compliance that is ongoing, then you get into the issue of war crimes.

Look at the issue of de-nationalization—the fact that in 1906 the Americans started a de-nationalization program, and we have evidence of it. That calls for reparations and restitution. The fact that Hawaiians were drafted to fight American wars and died. This also calls for reparations and restitution. This is not a political process where we have to ask people, "Well, what do you think?" This is a reality check. This is like a child who thought he was adopted but finds out he was kidnapped. There are no adoption papers, so let's take a look at everything in Hawai'i. Everything that we think exists doesn't exist. Nobody owns land. There is no legal title. Foreigners who have come through Hawai'i, both Americans and other foreigners, have paid federal and state taxes. That taxation is all illegal. It's called pillaging. That means that they can get that money back because the State of Hawaii cannot claim to be a government. In this way, you start to remove the basis of power. Once you remove that basis of power, you're left with a person who is lost. That's why it's important that I needed to get the PhD and do more research to learn how we can manage the transition and learn how we can fix this problem. America is not going to fix it.

*And Hawai=i is not the only place where America has created this kind of problem. Pure political power has allowed them to do whatever they want in many places in the world.*

Oh, yeah. Manifest Destiny. Actually, the biggest difference between Hawai'i and the rest of the world that America has been involved with is that America has worked with real



governments elsewhere. They may have been authoritarian, they may have been abusive, but they were governments. For example, Mubarak in Egypt, and Saddam Hussein in Iraq. Though they were tyrants, they were really the heads of state, so the US was dealing with recognized governments. Here in Hawai'i that's not the case. They set something up pretending to be a government. There is nothing like it anywhere else.

When you have governments of an authoritarian form like Iraq, that still allows an oil company to have a valid contract which that government can enforce. But look at us. There are no contracts. You just entered into commerce with the boy scout troops pretending to be a government.

So how to you prevent this tangled net from unravelling? That becomes the question now. It's not "What do you think, should we pursue restoration?" Americans are part of this problem now. That's why it's so important that the terminology and historical facts are researched. We strive to be as accurate as we can be.

*I can imagine the denial would be pretty deep, though. No matter how much you explain this to people who live here, even when they admit the truth of the facts you present, they are going to say, "Yeah, but why do you want to make this trouble now? Hawai'i is at peace. Most people are doing OK."*

That's a good point because people will always take the easy road. If there is fear, close your eyes. My approach in all of this is to look at it as a vested interest. I can speak to people who seek an answer if they have a vested interest in getting that answer. Before talking about Hawai'i, how about talking about the history of Hawai'i?

Let's say you've been living in Hawai'i for thirty years and you bought some property, a very beautiful place on the shoreline. I ask you how you got it. You say you bought it from this guy, and he bought it from a guy and so on all the way back. All titles in Hawai'i go back to 1845. Everybody recognizes that. It's on our maps. Then I ask you if you have a mortgage. A mortgage is based on collateral, and the mortgage is the legal instrument

whereby you grant the bank a hold on your property to ensure the repayment of your loan. There are two instruments. One is the recorded loan with the lender and the other is collateral that secures the loan. In case of default, the mortgage authorizes the lender to sell your property to cover the debt owed. Before the bank accepts your mortgage, they want to make sure that you own the property. In order to do that, they can't take your word because you don't know the record back to 1845. They have to go to a title company to get a title search done. The bank says they won't accept the mortgage only by the opinion of the title company. They want title insurance too, so you have to pay for title insurance here in Hawai'i, and this protects the lender for the amount of money borrowed. A covered risk in the title insurance policy concerns a defective notary. If you can show that there is a defective notary in the transfer of the deed, the insurance pays off the loan.

In 1893, the Hawaiian government was illegally overthrown and the US government later admitted to it in the 1993 apology. It's never been re-established by the United States and it's always been occupied. If you do a title search, who is the notary on January 20, 1893 after the takeover? That person was an insurgent that President Cleveland asked the queen to grant amnesty to because he was to be convicted and executed if found guilty. But the queen didn't grant amnesty because the president didn't re-instate the government. She couldn't grant amnesty before a person was convicted, so he had to stand trial first. That person is still an insurgent, which means that's a criminal that you are calling a notary. That's a defective notary, and that means the insurance policy pays off the loan. Now these contracts can be used for our own benefit by working in this system.

*So everything is in default?*

Well, yeah. That's why you have insurance.

*Except that insurance fund goes broke... Are there any analogies to make with what=s happened recently in Crimea? The Russian annexation of Crimea has Americans very upset, but Russia claims it is acting within existing treaties.*

It's a little different because Crimea broke away then ceded itself to Russia by a treaty. There really is no comparison there, but we are like the Baltic states: Latvia, Lithuania, Estonia.

*It just seems like Russia has a stronger claim to say Crimea is part of Russia because there is a treaty that allowed for Russian military bases there, whereas America says Hawai'i is American but there is no treaty.*

Well, it actually can become problematic because it's infused with a lot of interpretations either from an American standpoint, or a Russian standpoint, or a Ukrainian standpoint. What I like to rely on is what American officials said in 1893 and 1898. Americans now have nothing to say today because they are now successors of these authorities who have done illegal things. This is why I don't allow myself to be placed in a position of argument as opposed to presenting evidence that others are free to try to falsify. That's the only way we can fix this. The only way that we can get through this de-nationalization and brainwashing at every level regarding our history, the whitewashing of our history, is to speak to facts that can be tested for falsifiability.

As we move forward we start to see the trajectory going one way which is based on false assumptions. We need to pull that trajectory back to the word "occupation." Let's go back to August 12, 1898, the time of the Spanish-American War, when Hawai'i became a US territory. That's when the laws of occupation began to be applied. The question is: What were the laws of occupation on August 12, 1898? Then we get into customary international law which was codified one year later in 1899 in the Hague Convention, then later in 1907, and later in the 1949 Geneva Conventions. When we keep it to a historical analysis that applies international law as the interpreter, it prevents the politics from clouding the discussion.

We're definitely going to get into power struggles, moves to try to prevent this information from coming out. That's normal, but I'm not going to put myself in a position where I have to argue with someone that this is similar to another situation. If I do that, it's merely to

provide comparative analysis. And that's why we use the Baltic states which had their sovereignty restored after the USSR ceased to exist. Crimea actually has a similar history to Kosovo, and Serbia still refuses to recognize Kosovo as an independent state. It's very similar, though. Now Putin says, "Look at Kosovo." Those are the comparisons that would fit, so I wouldn't think that we are the same or even similar to Crimea.

*As students learn about all this and start to feel pride in their culture, do they to some extent idealize the past or idealize what the future could be? Hawai'i was a hierarchical society, there was social inequality, there were social classes and warfare.*

But that evolved when Hawai'i became constitutional in the 19th century. Yeah, Hawai'i was very hierarchical under the ancient system. It was very Polynesian, but that changed once it became a constitutional system in 1839 with a declaration of rights. By 1864, it had adopted the separation of powers as the cornerstone of Hawaiian constitutional law. There were always checks and balances. Actually, Hawai'i has a very close tie to Great Britain. English common law actually applies here, so in a sense we are British. In 1792, under Kamehameha I we joined the British Commonwealth as a protectorate. That's why we have the Union Jack on our flag. We borrowed English inventions such as governors.

*Yes, well the question I was trying to ask is whether people realize how much Hawai'i was westernizing in the 19th century. They might be thinking that the past was the time of the Noble Savage and everything was idyllic.*

Exactly, that's what we were taught. That's what we counter. The narrative that has been promoted through de-nationalization is that we were inept, we were savages and we needed to be civilized by the missionaries. It was all lies. It was concealing the truth of what actually happened. When the missionaries first came to Hawai'i, they were not in control. They were never in control and in fact they were watched by the chiefs. When the first American missionary showed up in 1820, after Kamehameha I died, they were the wrong missionaries. As Hawai'i had become a British Commonwealth member in 1792, Kamehameha I asked Captain Vancouver to bring in British missionaries because he knew

that our religion had to conform to the Protestantism of the British Empire. When the American missionaries showed up, they were Protestant, but they were kept on the ship. They couldn't land for about a week while the king tried to figure out what they were doing here. The king had a concept of allegiance and obedience to Britain, but here were missionaries from America coming on the wake of the War of 1812. He wanted to keep them at bay. He didn't know who they were.

One of the advisors of Kamehameha II was John Young, a Briton, and he actually went onto the ship and explained to the missionaries, "We have a slight problem here: right religion, wrong nationality." When he explained that to the king, they were allowed to land for one year. They were with the chiefs and the chiefs were watching them. And after four extensions of that one-year permit, the chief said "OK, your religion is good. Now you can teach the people." Now the way they wrote the history books is that the missionaries came and every Hawaiian just fell over and was mesmerized by these people of God. That's not the case. It was all made up.

What's interesting is most of those American missionaries became Hawaiian subjects and gave up their American citizenship. They were naturalized. They weren't Americanizing the Hawaiians. They participated in the development of the legal system and Hawai'i's transition to a constitutional monarchy. When we teach this, we counter that narrative that we were taught before by the United States.

*In the archives at the University of Hawai'i and the Bishop Museum are there documents and identification papers of those people who naturalized?*

Yes, you can go to the archives and ask for naturalization paperwork of the original missionaries and they'll bring out copies for you.

*What about currency? Did they have their own currency?*

Yes, under Hawaiian law three currencies were recognized: the US dollar, the Hawaiian

dollar and the British pound. What's good about that is that's still law today, so you could actually use the currency that has the most value.

Speaking of the archives, this speaks to the fact that we have all this stuff. It's very difficult to falsify the record. When you read them, it's like waking up from a bad dream.

*Do you do primary research in the newspapers and documents written in Hawaiian?*

Yes, but the Hawaiian language needs to be understood in its context. Because we're dealing with precise definitions of law... the Hawaiian language was not equipped to be so specific. It was on some points quite ambiguous because it didn't have a particular word in every case, so it is better to use English to understand the government structure and the international diplomacy. Hawaiian language is good for understanding how the country operated. A good place to see that is in the court records because you see contests between plaintiff and defendant. If you go into the circuit courts you can read some of the records that are in Hawaiian.

What I am careful about is to make it clear that this is not a "native push" as it's been portrayed to date because that's borrowing from the anthropologists' view that we are indigenous. We're not. Once you start looking at Hawai'i as a country, certain terms change their meaning. Hawaiian becomes a nationality, not an ethnicity. But the United States created Hawaiian ethnicity in the Hawaiian names act of 1921, and they set the stage for us to be viewed as Native Americans. But Hawaiian is a nationality, not an ethnicity, even under Hawaiian law because Hawaiian refers to the geographical location of Hawai'i. For us, Hawaiian is short for Hawaiian subject. In Hawai'i you can be Hawaiian and still be Black, Manchurian, Scottish, Welsh... That's what we're going through, so it's a matter of getting over the propaganda, which really started in 1906. The propaganda wasn't there before. For the next two generations, minds were basically wiped clean. That's de-nationalization. Therefore, we don't need to reconnect to ancient times. We are just going back to before the brainwashing. And that's what provides the continuity that people cannot deny today. I'm not one to be the new interpreter of Hawai'i's identity. I'm just reconnecting

to what it was and what we could become, but first by understanding who we are now. And we don't know too much, so we should not be making a lot of decisions without first getting educated.

*Your approach reminds me of the work of Jennifer Robinson, a lawyer who is helping West Papua in its fight for independence<sup>25)</sup>. When she got involved with them as a student, she just decided she was going to become a lawyer and fight for this within international law. The Dutch had made promises that West Papua would be an independent country. The UN was supposed to make sure that happened when decolonization started, but in the 1960s America just made sure it was given away to Indonesia.*

There is so much inequality in self-determination because it is a relatively new term. It was first used by Lenin at the breakup of the Russian Empire. He was basically saying that the components that made up Russia had the right to self-determination, to either be independent, like Lithuania, or be a part of the Soviet Union as a federated system. Woodrow Wilson then used self-determination as Lenin used it, but he applied it to the League of Nations mandate territories. He used it after the Treaty of Versailles when the Middle East was partitioned. It was formerly Ottoman Empire. Palestine was under British control. The area we call Lebanon was under French administration, and each one was mandated to become an independent state. Palestine was fully recognized as being a mandate territory with a right to self-determination. But West Papua would be a trust territory under the United Nations because the Dutch colonies were not classified as mandate territory—only former territories of the Ottoman Turks and the Germans were. They didn't have any status under international law, so they were left to the will of the states. And that's when things don't operate in their favor. And it always becomes a compromise.

In the case of West Papua—I'm not going to go into the details because that's not my area—but I understand the context. It's still a political process. You're dealing with a state called Indonesia, and The Netherlands, still a state, and with what exactly self-determination is under the UN charter [UN resolution numbers 1514 (XV), 1541 (XV)

and 1654 (XVI)]<sup>26)</sup>.

In our case, we are a state. We are able to say we have the treaties. We're not saying we're trying to get a treaty, or trying to negotiate. But you see, we used to believe that we were like West Papua. We used to believe we were like the Maori in New Zealand because people used terminology like indigenous peoples, self-determination, colonization, decolonization. These are all premised on not being a state but wanting to become a state, or you can become incorporated within a state or enter into a free association. We were led to believe that. None of that stuff worked. That approach only re-enforced the American presence here. It actually fed it, so whether or not that was contrived, as a conspiracy theorist might say, it actually was employed. Our own people began to operate within that framework. Professor Trask and others at the University of Hawai'i started to connect themselves to the American Indian movement and it just became so problematic because it was exactly what we were not.

*Has Professor Trask acknowledged that you're onto something, that this forces everyone to reassess the approach?*

Well, a lot of her students who are professors now are caught between the two approaches. I've been identified as the one who created this problem at the University of Hawai'i. I was actually told that by one of the professors of Hawaiian Studies, Jon Osorio.

Here's how I got to the university. I got my bachelor's degree when I attended from 1984-87. Professor Trask was a teacher at the time and I know what they were teaching at the time because I took the classes. Missionaries controlled everything. It was all very anti-haole (anti-white), very race-based politics. It didn't explain anything. It was just venting. And students came out being angry. It didn't do anything other than just getting people more angry.

I decided to drop that and just pursue my military career. I was trained as an officer and I learned how to gather information, not as an academic researcher but just as an officer



gathering intelligence. And that's when I realized, after looking in the archives at original sources, Professor Trask was wrong. Lilikala Kame'eleihiwa, another professor, wrong. They had the same facts, but they had the wrong theory. It's like playing baseball with football rules. It created frustration. We were a bona fide country. This was an issue of nationality, not ethnicity. The past was not what they claimed it to be.

When I was at The Hague in 2001, I met the Rwandan ambassador. That's what prompted me to go back to the University of Hawai'i. I came to the Hague and I was going to rip it inside out. I came from the experience of seeing this was the wrong history. But at The Hague I realized this is where we can go with this information, but we need to begin re-education. I had to go toe-to-toe with all of them, and how do you do that? Write papers. And that's all I did, and that's how I got to where I am now. I've been told that I started a little native revolution.

But I don't play the race card. This is not a matter of ethnic strife because we didn't have that history. Belgians created that problem between the Hutus and the Tutsis, the same with the British and the Sunni and the Shia and the Kurds. It's all power balancing. We didn't have that until we got occupied by the United States. They brought in racism.

When the military came, a lot of them from the South were very prejudiced. They began to treat us in our own country as lesser than them. There was the Massie case in the 1930s that speaks to that [a sexual assault case that provoked panic about white women being preyed upon by men of other races]. The military brought all that stuff. What I don't want to do is play into that. We have to accept it, call it what it was, but let's do a compare-and-contrast. What did we have back then? The white man didn't control the Hawaiian Kingdom like we were led to believe. The white man was actually Hawaiian and part of the kingdom. It was only after the overthrow that they had to align themselves with the racial hierarchy of America.

There were the big five plantation owners. They started to borrow from America and export it to here, so we still have to deal with this history, but it's not Hawaiian. We have to deal

with the fact that racism was brought here. I see racial dynamics throughout the world and anthropologists zero in on that because they study culture, and they study true racism and ethnic strife. But it wasn't here before 1900. It doesn't define this country.

Sun Yat Sen was educated here in the 1870–80s at the 'Iolani School, and then he went to Punahou. He said he learned democracy in Hawai'i, and that's what he took to China. He didn't learn it in America. He couldn't have because of the exclusionary act. How could he have learned democracy from that? But because they think this is America, they think Sun Yat Sen learned about democracy in America. The 'Iolani School was created by Kamehameha IV and Queen Emma and it was an English immersion school. Hawaiian was spoken most everywhere else. Sun Yat Sen wrote an essay in English voted the best essay by 'Iolani, and King Kalakaua gave him the award. That's like Barack Obama<sup>27)</sup> is coming to your school and giving you an award. When my students hear that, it really changes the paradigm of what they thought Hawai'i was.

We're dealing with over 100 years of de-nationalization. It's going to take time. Everyone will learn at their own speed. I can move on this quickly. Others may take a bit more time, but when you educate people they have tools to work with. Within their particular profession, as an attorney, as a banker, as military, they become more proficient and things begin to move faster. When we filed a war crimes complaint with the Canadian government, that wasn't a political idea. It was just the natural conclusion given the situation. A Canadian company is involved, so it was possible to take the complaint there.

I met with the Consular General of Japan two weeks ago. I delivered a complaint there as well, because of the Japanese component of the TMT, for committing a crime on Mauna Kea. I was asked by the Consular General if I was against the building of telescopes. I said no. We just want it to be built legally. Right now, they've gone through a process that is illegal. They have destroyed property, and this has led to unlawful confinement and unfair trial. These are war crimes that fall under Japanese war crimes statutes. Japan is a monist state, which means international law is superior. You don't have to create legislation to implement international law. Japan doesn't operate on a dualist system like Canada and

America. If they signed a treaty, that law trumps everything. Then we're talking about Geneva Conventions.

I asked him to have his Ministry of Justice review this information that answers these questions that come before the violations being alleged. Then I told him that when he sees this he will also see that the consulate is also illegal. It was created under the Japan-US treaty. It doesn't apply. This should be under the Hawai'i-Japan treaty, Article 3, that allows the creation of consulates. Japan doesn't have this, so Japan needs to fix this problem as well. When you start to show others how they have vested interests in solving this problem, they start to perk up. Then it's not a matter of "let's help them," it's "let me help you help yourself" because you are just starting to wake up to the reality.

*But it's always a huge political issue for Japan to go against America on anything.*

That's why my approach is to say that America has nothing to do with it. If you worry about America, you're only digging yourself deeper in war crimes. Inaction doesn't remove that problem. In fact, now I can say you've been fully apprised of the situation, so next we're talking about criminal intent. You can use the justification of fear, but that defense will have to be sold to the jury. It's still a war crime. I said to the consul you can build the telescopes on Mauna Kea if you go through the process under Hawaiian law. If I want to build telescopes on Mt. Fuji, I will go through Japanese law. So this is not a political contest. This is just showing that there is non-compliance here and it has ramifications. You've got to start to comply.

*Would there be any way to take on something bigger like, for example, the storage of nuclear weapons on Oahu?*

That's all part of the destruction of property.

*How would you proceed with a case on such an issue that challenges the right to place military bases here?*

ICC. International Criminal Court. The United States didn't sign the ICC Statute, the Rome Statute, so they don't allow jurisdiction of the ICC over their territory. But we're not on their territory. We're occupied, so Hawai'i falls under the universal jurisdiction of war crimes.

What we need to do is isolate. Here's a good way to proceed. Here's America [spreading cards on the table]. And here are the partners of the United States all over the world that America controls through the economy and whatever other pressures they apply. The object is to separate and isolate. Canada: war crimes. Canada is responsible for dealing with it through its own statutes. Japan: war crimes. Switzerland, Great Britain, New Zealand: same thing. We want everyone to look at the United States and realize that it is not in their vested interests to align themselves with the US. But I need them to see us because I'm going to use international law to show them not just how they are part of the problem, but also how they can become part of the solution. Until that happens, America controls everyone, and America is very strong, there is no doubt about that. I teach international relations. But this is realist theory as Hans Morgenthau defined it: countries do something only because of their own vested interests. What is a particular country's vested interest? That which is self-help, leading to self-preservation, that which we can focus on separately.

For example, economic benefits. I'm going to show that all titles are no good in Hawai'i. There is evidence for that. People can look at it and try to falsify it. Insurance companies will go bankrupt because nothing was notarized legally. Other countries are going to feel that pain.

Another example: the military. What is the thorn in the side of China? US Pacific Command. According to Geneva Convention number 5, rights of territories of neutral states, the military of a belligerent cannot operate on the territory of a neutral country. We are neutral. We've always been neutral. It's in our treaties. All of a sudden now China can approach the US and say, "You folks are in Hawai'i illegally." Now they have something.

Putin, in Russia, what's the thorn in his side? Again, it's the Pacific Command. When you

apply and speak to their vested interests, which is realist theory, then everybody will do what they need to do, but we are just ensuring that the laws of occupation are complied with, and that the occupation comes to an end. Period. Just follow the law. I'm careful in managing how these things take place, but there are things that you cannot control.

*Well, you keep the knowledge alive. It may take a while, until America is in a weakened position and has to face this problem.*

No, it could be quick.

*You think so?*

Yeah, it's just a matter of reaching a decision. Look what happened in 1893. If someone came up to a Hawaiian subject and said Hawai'i is going to be a part of the United States in five years, he would have said, "Come on. Give me a break." It's really a matter of the decision-makers who you speak to, how they will deal with economic and military questions. For us it's a challenge to find the combination of strategies to apply.

*We see economic power shifting now because China and Russia are forming a common trading block where they won't have to use dollars anymore, but Japan, instead of joining it, is going along with America and joining sanctions against Russia. Some say they're missing out on the future here.*

Well, the one thing about ending occupation is that it will definitely affect the economy of the United States. Every business in Hawai'i will be gone. It never existed. That could create a domino effect. It will be similar to the banking crisis. Hawai'i is going to create a crisis. I need to show people that this is coming. It's like a storm warning.

*Is there any way to make a simple transition where you say Hawai'i state law now becomes Hawai'i national law for a transition period...*

Exactly. I covered that in my doctoral dissertation. That's based on necessity. The way you can fix this problem is by the very way the problem was created. In 1893, a provisional government was created where they carjacked the Hawaiian Kingdom government. The Hawaiian Kingdom government had the police power that would register businesses, transfer titles, hear cases, it had judicial, legislative, and executive branches. That provisional government turned it into an armed force. That's what the provisional government was. President Cleveland admitted that they were neither a government *de facto* nor *de jure* but self-declared, so it was an armed force held together by the backing of the US military. That armed force changed its name to The Republic of Hawaii in 1894, then in 1900 the United States Congress, through their laws, changed the name to The Territory of Hawai'i, then Congress changed it into a state in 1959. It's still an armed force. Everything is still illegal, but they've married people, they've issued licenses. But there is a way to fix this problem because the State of Hawaii, as an armed force, is in effective control of these lands—they are, that's a fact.

The State of Hawaii government is an armed force pretending to be a government, but they can become a government under the laws of occupation. That's a military government. Article 1 of the Hague Convention says an armed force, an organized militia, as well as the military of the state can issue a proclamation declaring it to be a military government which would be a proxy government for administering the laws of the occupied state, pursuant to Article 43 of the Hague Convention. The governor today can issue a proclamation declaring the State of Hawaii to be a military government.

They did this in 1941 after Pearl Harbor was attacked. Governor Poindexter declared martial law, created a military government led by General Short, and it was then under military control. They did it back then under so-called US law. This time it would be done under international law. Once you declare yourself to be a military government, you are now a *bona fide* government and that government can issue a proclamation that all laws illegally imposed from 1893 to the present will be the provisional laws of the occupied state so long as these laws do not run contrary to the letter, spirit and intent of Hawaiian law as it was. Necessity can allow this to happen, so there is a way to fix it, but we're going to have

to push it to that point of exploding before that can take place. That's how this game is played.

Once a provisional government is there, we can begin to transfer authority back to the lawful government. The legislature will take up the issue of enacting those provisional decrees by the military governor—who could be the same governor who is running the State of Hawaii now.

Once you start to look at the rules, you can come up with ways to solve this, and it's not far-fetched. It's actually very conservative.

*You could even have a Status Of Forces Agreement and the Pacific Command would just carry on.*

No. We don't want that because we are neutral in our treaties.

*But the new legitimate government may say, "We don't want to be neutral anymore. We want to be protected by a larger power or an alliance."*

Why would we do that? That's crazy because you just turn yourself into a target.

*Exactly, but Japan did it, and so many other countries have done it.*

Well, Japan had to do it because they lost the war. That comes from the treaty of surrender.

*But seventy years later they still want American bases there.*

Yes, they're tied. But the important thing about Hawai'i is we are neutral. It's in our treaties. We are not a neutralized country. Switzerland, Belgium and Luxembourg agreed to neutralize as a condition for recognition of their independence. We are a neutral country that ensured our neutrality was enshrined in treaties. We are very different, and in fact that's

what I'm presenting in Cambridge next month. It's really a matter of agency and how Hawaiian authorities in the 19th century took it upon themselves to say this is the best way to go. We are in the middle of the Pacific. Anybody can come in to make use of the harbors, but they've got to disarm. When they get out of our territorial waters, they can go fight, but we are neutral. We cannot do anything else because once you give up neutrality, you've really lost your independence. If you get into a Status of Forces Agreement, that's an alliance and you become a part of war. We are not going to allow that. We are like Switzerland in the middle of the Pacific.

*I hope it stays that way.*

It has to because you don't fix this problem of being kidnapped by asking to be adopted. America has to pay compensation and restitution and stay out of Hawai'i. Then the only way they can come in is through diplomacy, through treaties, through trade, but they can keep their sovereignty for themselves.

*End of interview*

## **Concluding Comments**

I became interested in Hawai'i's status as an occupied country through an earlier interest in the struggle of Okinawans to have US military bases removed from their territory. I naively thought, like many in Japan, that the US should move these military operations back to Hawai'i because they rightly belong on American territory. Yet as I compared the two places, I learned that under international law Hawai'i actually had a stronger claim than Okinawa on the right to reject an American military presence. Unfortunately, Okinawa never had foreign treaties and recognition as an independent state before it was absorbed by Japan. This leaves Okinawa to fight for self-determination through a political negotiation with the Japanese government, and the Japanese government is very committed to its alliance with America. Although Prime Minister Shinzo Abe stated in his speech of August 15, 2015, "We shall abandon colonial rule forever and respect the right of self-determination of all peoples throughout the world<sup>28)</sup>," it is unlikely that he had Okinawans



in mind, or anyone specifically, as a people he would assist in becoming independent.

During the interview, as a spokesman for the provisional government, Professor Sai was careful not to discuss the policy or ideology that a future legitimate government would follow. Those are to be decided by democratic choices that Hawaiians make after the occupation ends. However, it was encouraging to hear Professor Sai, a former US Army captain, express a strong personal view that Hawai'i's record as a neutral country is not something that should be up for future debate. It's a fundamental value that makes the work to restore the nation worthwhile, and it is something that can inspire the global community as well.

There is an increasing global desire for America to scale back its interventionism and close its global network of military bases. The day has come when the world doesn't want it, and America can no longer afford it. It is ironic that a place that everyone thinks is American is the place that has the strongest chance of using international law to expel the American military presence. Other nations are bound by their treaties and Status of Forces Agreements. It is also inspiring too to think that this will happen in the place that was the last place on the globe to be inhabited by humans, and the last to be contacted by the European explorers who launched the age of Western Empire.

Today, Western science turns its back on earthly problems as it tries to build telescopes and train astronauts to Mars-walk on Hawaiian mountains<sup>29)</sup>, but for those who prefer to deal with the home we have, Hawai'i can be a symbol of our last hope to avoid the catastrophes of environmental destruction and war, just as it was a last hope for the Polynesian explorers who first came in the years of the early Christian calendar—an interesting coincidence considering the peaceful aspirations of Christianity that preceded the meeting of two cultures in Hawai'i in the 18th century<sup>30)</sup>. Now that Japan has re-interpreted its “peace” constitution to allow for overseas deployments in assistance of allies, the world should support Hawai'i not only for the sake of self-interested realism but more importantly for the role Hawai'i can play as a new standard bearer of the idea that nations can renounce war, choose neutrality and gain security from a system of

international laws that protects their sovereignty.

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- 14) David Keanu Sai, *1893 Executive Agreements and the Profound Impacts Today*, from Keauhou-Kahalu'u Education Group, <https://vimeo.com/39971385>.
- 15) Ed Rampell, "The Pentagon and Hawai'i, Militarized State of Armed Occupation," *People's World*, September 28, 2015, <http://www.peoplesworld.org/the-pentagon-and-Hawai'i-militarized-state-of-armed-occupation/>.

- 16) *United States Public Law 103-150, 103rd Congress*, Joint Resolution 19, November 23, 1993, <http://www.Hawaii-nation.org/publawall.html>. The resolution agrees on almost all points with the criticism of the standard American narrative described here, except on one point it states, “John L. Stevens... the United States Minister... conspired with a small group of non-Hawaiian residents of the Kingdom of Hawai’i, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawai’i.” Daws’ history of Hawai’i lists the conspirators as six Hawaiian citizens by naturalization or birth, five Americans, one Briton and one German (see Gavan Daws p.273). The wording in the resolution is another indication that American interpreters of the history persistently emphasize Hawaiianness as ethnicity rather than nationality. Some of the “non-Hawaiian residents” were Hawaiian by nationality but not ethnicity.
- 17) Noelani Goodyear-Kaopua, Ikaika Hussey, and Erin Kahunawaika’ala Wright, eds., *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty* (Duke University Press Books, 2014).
- 18) James V. Albertini, “Hawaii: Life Under the Gun,” *Bulletin of Atomic Scientists* 37, no.3 (March 1981): 50–57. <https://goo.gl/0eOihT>.
- 19) “Hawai’i War Crimes: Depleted Uranium found in Army Training Areas in Hawai’i,” *Hawaiian Kingdom Blog*, May 15, 2014, <http://Hawaiiankingdom.org/blog/Hawai-i-war-crimes-depleted-uranium-found-in-army-training-areas-in-Hawai-i/>.
- 20) Hans M. Kristensen, “Where the Bombs Are, Federation of American Scientists,” November 9, 2006, [http://fas.org/blogs/security/2006/11/new\\_article\\_where\\_the\\_bombs\\_ar/](http://fas.org/blogs/security/2006/11/new_article_where_the_bombs_ar/).
- 21) Chad Blair, “Mauna Kea Telescope Protesters Arrested,” *Honolulu Civil Beat*, April 16, 2015, <http://www.civilbeat.com/2015/04/mauna-kea-telescope-protesters-arrested/>.
- 22) David Keanu Sai, “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai’i Today,” *Journal of Law and Social Challenges*, University of San Francisco, Vol.10 2008 68–133, <http://www2.Hawaii.edu/~anu/pdf/Indigeneity.pdf>.
- 23) David Keanu Sai, *1893 Executive Agreements and the Profound Impacts Today*, Keauhou-Kahalu’u Education Group, <https://vimeo.com/39971385>.
- 24) Donald Keene, 346–351.
- 25) Jennifer Robinson, *Courage is Contagious: Jennifer Robinson at TEDxSydney*, TEDxSydney, 2013, <https://www.youtube.com/watch?v=WbKHkjg5Kac>.
- 26) *The United Nations and Decolonization*, [http://www.un.org/en/decolonization/ga\\_resolutions.shtml](http://www.un.org/en/decolonization/ga_resolutions.shtml).
- 27) When President Obama ran for president the first time, his opponents were desperate to prove that he should be disqualified because he was not born in the United States. The lack of a legal basis for his State of Hawaii birth certificate could have been the proof they needed, but as conservative patriots they didn’t know the history, and if they had known they would not have wished to inform Americans that Hawai’i was not part of America.
- 28) Justin McCurry, “Japanese PM Shinzo Abe stops short of new apology in war anniversary speech,” *The Guardian*, August 14, 2015, <http://www.theguardian.com/world/2015/aug/14/shinzo-abe-japan-no-new-apology-second-world-war-anniversary-speech>
- 29) *Hawai’i Space Exploration Analog and Simulation*, HI-SEAS, <http://hi-seas.org/>.
- 30) *Notes on the Discovery and Settlement of Polynesia*, Polynesian Voyaging Society, [http://pvs.kcc.Hawaii.edu/ike/moolelo/discovery\\_and\\_settlement.html](http://pvs.kcc.Hawaii.edu/ike/moolelo/discovery_and_settlement.html).